

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26-7-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.19944 of 2006 and M.P.No.1

P. Victor Joseph Raj

...

Petitioner

Vs.

1. The Accountant General,
Teynampet,
Chennai.
2. The District Treasury Officer,
Trichy.
3. The State of Tamil Nadu,
rep.by the Secretary to Government,
Finance (Pension) Department,
Secretariat,
Chennai - 600 009.

.... Respondents

(R-3 impleaded as per the order dated 12.7.2006
in M.P.2 of 2006 in W.P.No.19944 of 2006)

This writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus to call for the records on the file of the third respondent in connection with the order passed by him in G.O.Ms.No.191 Finance (Pension) Department dated 16.3.1996 and quash the same and consequently direct the respondents to pay the dearness allowance in petitioner's family pension and further direct the respondents to pay the recovered amount from petitioner's family pension.

(Prayer amended as per order of the Court dated 12.7.2006 in M.P.3 of 2006 in W.P.No.19944 of 2006)

For Petitioner	:	Mr.K.Sanjay
For 1 st Respondent	:	Mr.V.Vijayashankar
For Respondents 2&3	:	Mr.A.Arumugam, AGP

O R D E R

In this writ petition, petitioner seeks to quash the G.O.Ms.No.191, Finance (Pension) Department, dated 16.3.1996 and consequently direct the respondents to pay the dearness allowance on petitioner's family pension and further direct to pay the recovered amount from petitioner's family pension.

2. The brief facts necessary for disposal of the writ petition are as follows.

(i) Petitioner is working in the Southern Railways and he is receiving salary from the Central Government. His wife was employed as Secondary Grade Teacher in the Municipal Middle School in the year 1980. The marriage of the petitioner took place in the year 1983 and the wife of the petitioner expired in the year 2005, while she was in service and the first respondent granted family pension to the petitioner as per the rules from the date of death of petitioner's wife.

(ii) The grievance of the petitioner is that the amount of family pension sanctioned is now reduced to half from April, 2006 i.e., from Rs.6,399/- to 3,525/-, for which neither notice was issued to the petitioner nor opportunity of hearing was given. On enquiry from the respondents it was learnt that the petitioner has been receiving dearness allowance and the same is being paid along with his salary and therefore for the family pension, he is not entitled to get dearness allowance.

(iii) The State Government issued G.O.Ms.No.191 Finance (Pension) Department dated 16.3.1996 and stated that the Government of India in its office memorandum dated 14.3.1995 issued instructions following the judgment of the Honourable Supreme Court in Civil Appeal Nos.3542-3546 dated 8.12.1994 and upheld the decision to withhold the dearness allowance on pension and family pension in the case ex-servicemen, who got reemployment or whose dependants got employment. The third respondent examined the question in the light of the above Government of India decision and ordered as follows,

"The Government have examined the question of allowing Dearness Allowance on family pension to the family pensioners of State Government who are employed and decided not to allow Dearness Allowance on family pension in the case of family pensioners who are employed. Accordingly, they direct that Dearness Allowance on family pension shall be

suspended if a family pensioner is employed in State or Central Government or a Government Undertaking or a Corporation or an autonomous body or a local fund in a post on fixed pay or on time scale of pay where Dearness Allowance on pay is allowed. In all other cases of employment where no Dearness Allowance is allowed, in addition to remuneration. Dearness Allowance on family pension shall be allowed. These orders shall take effect from the date of this order. In the case of those who were employed prior to the date of this order, but continue to be on employment on the date of this order. Dearness Allowance on family pension whenever not admissible shall be suspended with effect from the date of this order."

The said Government Order is challenged in this writ petition with a prayer to quash the same and consequently direct the respondents to continuously pay dearness allowance on petitioner's family pension and also to refund the recovered amount.

3. The first respondent filed counter affidavit and stated that by virtue of the impugned Government Order only the petitioner is denied dearness allowance on family pension.

4. The learned counsel appearing for the petitioner submitted that the Honourable Supreme Court in the decision reported in (1995) 2 SCC 32 = JT 1995 (1) SC 417 (Union of India & Others v. G.Vasudevan Pillay & Others, etc., etc.) dealt with the case of re-employed ex-servicemen and persons appointed on compassionate ground after the death of the person for whom family pension was sanctioned and the Supreme Court had not dealt with the case of the family pensioner, who was already employed and was receiving salary. Learned counsel further submitted that in the subsequent decision reported in (2000) 2 SCC 227 (H.S.E.B. and others v. Asad Kaur) the Honourable Supreme Court distinguished the above judgment and held that if a person is already employed and he was sanctioned family pension due to the death of his/her wife or husband, the said person is entitled to get dearness allowance on family pension along with salary/pension, payable to him by virtue of his appointment, prior to the death of the person concerned.

5. I have also heard the learned counsel appearing for the respective respondents and considered the rival submissions of both parties.

6. The point in issue is whether the petitioner, who has already been appointed prior to the death of his wife, is entitled to get family pension with dearness allowance, while receiving his salary with dearness allowance.

7. The impugned G.O.Ms.No.191 dated 16.3.1996 has been issued by the third respondent only on the basis of the judgment of the Honourable Supreme Court reported in (1995) 2 SCC 32 (cited supra). Admittedly, the said judgment has been explained in the subsequent decision reported in (2000) 2 SCC 227 (cited supra), wherein in paragraphs 2 to 5 the Honourable Supreme Court held thus,

"2. The appellants have placed reliance on a decision of this Court in Union of India v. G.Vasudevan Pillay ((1995) 2 SCC 32). The decision in that case dealt with ex-servicemen who had been re-employed. The Court said that pensioners who have got re-employment can be treated differently from other pensioners; and in the case of re-employed pensioners, it would be permissible in law to deny dearness relief on pension inasmuch as the salary to be paid to them on re-employment takes care of erosion in the value of money because of rise in prices. The Court also observed that the denial of dearness relief on family pension on a fresh employment being granted to the dependant/widow of an ex-serviceman will also be sustained.

3. This decision, therefore, deals with cases where (i) the pensioner himself gets re-employment, or (ii) the widow or a dependant of the pensioner such as a son, gets fresh employment on compassionate grounds. It does not deal with any case where one of the recipients of the family pension is also independently employed elsewhere.

4. The other decision which was relied upon by the appellants is a decision of the Punjab & Haryana High Court in the case of Haryana Civil Pensioners Assn. (Regd). v. State of Haryana ((1995) 7 SLR 181 (P&H) (DB)) where also the High Court followed the decision of this Court in Union of India v. G. Vasudevan Pillay ((1995) 2 SCC 32). The High Court dealt with Rule 55-A of the Central

Services (Pension) Rules and the instructions issued by the Central Government as well as by the Government of Haryana under which a pensioner was not liable to dearness allowance on pension during the period of his re-employment. The Court said that the person who was re-employed after retirement and who had got the pay of the re-employed post together with dearness relief, can be denied the dearness relief on his pension. The same observations were made in respect of the employment of a dependant on compassionate grounds. This case also, therefore, has not dealt with a situation where one of the recipients of the family pension is independently employed even prior to the death of the employee.

5. It is not the case of the appellant that the respondent secured employment on compassionate grounds as a teacher after the death of her husband. In fact, we fail to see how she could have secured any employment on compassionate grounds in a totally different service."

The Honourable Supreme Court held that the dearness allowance on family pension cannot be withheld even if the widow was in service, since the employment was not on compassionate grounds and upheld the judgment of the Division Bench of Punjab & Haryana and dismissed the civil appeal. Thus, the point in issue raised in this writ petition has already been decided by the Supreme Court in the above cited decision.

8. In this case, the petitioner was employed prior to the death of his wife and therefore the decision of the Supreme Court reported in (2000) 2 SCC 227 (cited supra) squarely applies to the present case. Hence the impugned order is unsustainable as held by the Honourable Supreme Court.

9. In the result, the impugned G.O.No.191 dated 16.3.1996 is set aside insofar as the G.O. not sanctioning dearness allowance to the family pensioners, who are already employed prior to the death of their spouse. The respondents are directed to restore the family pension with dearness allowance, sanctioned to the petitioner and pay the same from May, 2006 after adjusting the amount of Rs.3,525/- already paid from April, 2006. The arrears shall be calculated and paid on or before 31.8.2006 and the monthly family pension payable to the petitioner from August, 2006

shall be paid with dearness allowance. It is made clear that the ex-servicemen who got re-employment or persons got appointment on compassionate ground pursuant to the death of their spouse are not entitled to get dearness allowance on family pension.

The writ petition is allowed with the above directions. No costs.

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Accountant General, Teynampet, Chennai.
2. The District Treasury Officer, Trichy.
3. The Secretary to Government, Finance (Pension) Department, Secretariat, Chennai - 600 009.

+ 1 cc to Mr.K. Sanjay, Advocate SR No.33042

+ 1 cc to Mr.V. Vijay Shankar, Advocate SR no.33035

NG (CO)
SR/2.8.2006

Order in
W.P.No.19944 of 2006

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